

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Civil No. 07-mc-033 (MJD/SRN)

Petitioner,

v.

REPORT AND RECOMMENDATION

**Open Access Technology
International Inc.,**

Respondent.

Roylene A. Champeaux, Esq., Office of the United States Attorney, 300 South 4th Street, Suite 600, Minneapolis, MN 55415, on behalf of Petitioner.

No appearance on behalf of Respondent.

SUSAN RICHARD NELSON, United States Magistrate Judge

This matter came on for hearing before the undersigned United States Magistrate Judge on June 18, 2007, pursuant to the Petition and Declaration of Gary Mentz, Internal Revenue Service (IRS) Revenue Agent (Doc. No. 1), and an Order directing Respondent Open Access Technology International Inc. to show cause why it should not be compelled to testify and produce records as demanded in an IRS summons (Doc. No. 3). The Petition has been referred to the undersigned for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1) and District of Minnesota Local Rule 72.1. For the reasons set forth below, the Court recommends that the Petition be granted.

I. BACKGROUND

This proceeding is brought under the authority of Sections 7402(b) and 7604(a) of the Internal Revenue Code to judicially enforce an IRS summons. Gary Mentz is a duly commissioned IRS

Revenue Agent employed in Small Business/Self-Employed Examination, Territory 2, of the IRS, and is authorized to issue an IRS summons pursuant to 26 U.S.C. § 7602 and 26 C.F.R. § 301.7602-1.

Respondent is a corporation whose business address is 2300 Berkshire Lane North, Minneapolis, Minnesota. Revenue Agent Mentz is conducting an investigation into the tax liability of Respondent for the years 2002 through 2005. Respondent is in possession and control of testimony, books, records, papers, and other data which are relevant to the above-described investigation.

On December 5, 2006, an IRS summons was issued by Revenue Agent Mentz directing a representative of Respondent to appear before him on January 5, 2007, at 9:00 a.m., to testify and to produce the books, records, and other documents demanded in the summons. An attested copy of the summons was personally served on Mary E. Brown, Vice President of Respondent, by Revenue Agent Mentz on December 5, 2006. Respondent did not appear in response to the summons.

On April 17, 2007, Petitioner filed its Petition to Enforce IRS Summons and the Declaration of Gary Mentz. This Court issued an Order to Show Cause requiring the Respondent to appear in court on June 18, 2007, at 11:00 a.m., to show cause why it should not be compelled to testify and produce the records demanded in the IRS summons. The Order to Show Cause was personally and timely served on Ms. Brown on April 25, 2007. No written answer or response was received. Respondent failed to appear on June 18, 2007.

II. DISCUSSION

This Court finds that an Order should issue, directing the Respondent to comply with the summons. Revenue Agent Mentz is conducting an investigation of Respondent's tax liability, and he requires the summoned testimony and documents to determine the correct federal income tax liability of

Respondent for the years 2002 through 2005. Respondent is in possession and control of testimony and documents concerning the above-described investigation. The summons was issued for a legitimate purpose, and the summoned testimony and data are relevant to that purpose. The data is not already in the possession of the IRS, and all administrative steps for the proper issuance and service of the summons were followed. Therefore, Petitioner is entitled to the relief sought in the Petition: an order requiring a representative of Respondent to appear, give testimony, and produce records, as set forth in the summons, before Revenue Agent Mentz or any other proper officer or agent of the IRS.

III. RECOMMENDATION

Based upon all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that an Order be entered granting the Petition (Doc. No. 1); directing the Respondent to obey the summons and each and every requirement thereof; order Respondent's attendance and production of records as required and called for by the terms of the summons before Revenue Agent Mentz or any other proper officer of the IRS, no later than August 20, 2007, at 1550 American Blvd. East, Suite 500, Bloomington, Minnesota 55425; and order a representative of Respondent to appear for the purpose of giving testimony and records concerning the federal tax liabilities of Respondent for the years 2002 through 2005.

Dated: June 22, 2007

s/ Susan Richard Nelson
SUSAN RICHARD NELSON
 United States Magistrate Judge

Under D. Minn. LR 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by July 10, 2007, a writing which specifically identifies those

portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. A party may respond to the objecting party's brief within ten days after service thereof. A judge shall make a de novo determination of those portions to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable to the Court of Appeals.